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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,122	04/09/2001	Gary M. Katz	PIP-69B-KATZ	5972

31518 7590 11/27/2009

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ART UNIT	PAPER NUMBER
3622	

NOTIFICATION DATE	DELIVERY MODE
11/27/2009	ELECTRONIC

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/828,122
Filing Date: April 09, 2001
Appellant(s): KATZ, GARY M.

Bruce T. Margulies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 20, 2009 appealing from the Office action mailed May 22, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,644,723	DEATON et al.	7-1997
6,349,309	AGGARWAL et al.	2-2002
6,571,279	HERZ et a.	5-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Objections

Claim 27 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

The test for a proper dependent claim is whether the dependent claim includes every limitation of the parent claim. The test is not whether the claims differ in scope. A proper dependent claim shall not conceivably be infringed by anything, which would not also infringe the basic claim. If independent claim recites a method of making a specified product, a claim to the product set forth in the independent claim would not be a proper dependent claim since it is conceivable that the product claim can be infringed without infringing the base method claim if the product can be made by a method other than that recited in the base method claim. Therefore, claim 27 is improper dependent claims.

Claim 27 is not a ***proper independent claim*** since the claim incorporates all the limitations of an independent claim. Claim 27 dependent on claim 1. If Applicant asserts that the claim is independent claim than it should be written in independent form. Applicant may thereupon amend the claim to place it in proper dependent form, or may redraft it as independent claim, upon payment of any necessary additional fee.

The claim is still treated as improper dependent claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 11-19, 23, 27, 36, 44 and 48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 now recites "receiving, via at least one input device at a POS during a purchase transaction, said first consumer identification information, said first promotion, said second promotion, and product identifications of items of products being purchased: determining, with said at least one processor, during said purchase transaction, a promotion qualification indicating if a first product item associated with said first promotion and a second product item associated with said second promotion have been received via said at least one input device at said POS during said purchase transaction; and only if said promotion qualification indicates that both said first product item and said second product item were received via said at least one input device at said POS during said purchase transaction, with said at least one processor, deducting from a charge for said purchase transaction a value of promotion associated with said second promotion and a value of promotion associated with said first promotion". However there is no support for this limitation in the specification. The specification teaches receiving promotion identification information, using for example bar code reader, at a check-out counter (see [0034]). The specification also teaches a new record added to exercised promotion table 615 once the identity of both the promotion and the consumer is available to the processor and the record can include

information such as price of the product for which the promotion is being exercised, the store where the promotion is being exercised, the value etc., and the information can be accessed to determine the relevancy of a promotion and/or to identify a more relevant promotion (see [0038]). The specification however does not disclose how the promotions are redeemed.

The specification also does not teach that "only if said first consumer first product category purchase determination indicates no prior purchase by said first consumer of either an item of said first product or of an item in said first product category, storing, with said at least one processor, in a database in a computer memory in association with said first consumer identification information, said first promotion".

Claim 23 is also rejected for the same reason stated above.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 11-19, 23, 27, 36, 44 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites storing product identification information indicating identification information of consumers associated with purchase of items of products by said consumers ... associated with identification of previous purchase of items of products by the that consumer. First of all it is unclear what applicant meant by "storing, with at least one processor, in a database in a computer memory, product purchase history information, wherein said product purchase history information indicates identification information for consumers associated with

purchase of items of products by said consumers, such that each identification information for each consumer is associated with identification of previous purchase of items of products by that consumer. Does the database stores consumer identification and also the consumer's purchases of products or just the identification of a consumer who happens to purchase products and/or who happens to purchase products previously? Second it unclear the difference between item and product. If item is different than a product it is not clear what item of a product is. It is also unclear what the difference is between an item of a first product and *item of a first product category.* The specification teaches product and product class or product category but does not teach item of a product.

Claim 23 is also rejected for the same reason stated above.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 11-19, 23, 27, 36, 44 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Deaton et al. U.S. Patent No. 5,644,723.

Regarding claims 1-3, 11-19, 23, 27, 36, 44 and 48, Deaton teaches storing purchase history information for a customer, including previous purchase of items or products; determining if the purchase history information indicates prior purchases of product or product category; determining if consumer has not purchased a product (not purchased coffee or specific brand or coffee); determining a second promotion which has high relevance to the consumer

based on relevance criteria, plurality of promotions and at least from the purchase history information (different brand of coffee or purchasing products other than the brand or coffee); outputting the first and second promotion; ("printing on a single sheet of paper a (printing coupon at a point-of-sale (1) first promotion for said consumer to purchase a product item (any transaction at the point-of sale) from that one of said first product category and said first product that said first determination indicates that said consumer has not purchased (e.g. coupon to shop at delicatessen or coupon for coffee or specific brand of coffee) in order to obtain a first reward (coupon (discount) for the purchase of item not been purchased and (2) a second promotion for said consumer to purchase a product item from that one of said second product category and said second product that said second determination indicates that said consumer has purchased in order to obtain a second reward" (more than one coupon is printed at the point-of-sale, which indicated that more than one reward (discount) is provided during a shopping (spooling selected coupon at the point of sale) (see col. 69 line 42 to col. 71 line 18).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an

international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 2, 3, 23, 27, 36, 44 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by Aggarwal et al. U.S. Patent No. 6,349,309.

Regarding claims 1, 23, 27, 36, 44 and 48 Aggarwal teaches receiving identification from a customer associated with identification of previous purchases (see col. 10 lines 65 to col. 11 lines 15); storing product purchase history; storing a plurality of promotions determining promotion relevance criteria; selecting promotion determined by more relevant based upon the identification information of previous purchases; paring (two or more) the low relevance and second relevance promotion (a list of recommended items in order of frequency of purchase) (see col. 11 lines 29-46); determining a purchase history of the consumer (col. 10 lines 65 to col. 11 lines 15); selecting a promotion determined to be more relevant based upon the purchase history; paring the low relevance and second relevance promotion; providing the paired promotion to customer; providing via an output device said first and second promotion to the consumer Aggarwal teaches receiving promotional information regarding one promotion paring promotions with low relevance promotions with other promotions providing the paired promotions to the customer. Aggarwal teaches providing promotional list (displayed together) sorted according to for example frequency of purchase reported to user in order of frequency of purchase, i.e., with lower frequency of purchase listed under the ones with higher frequency of purchase (see col. 11 lines 7-46).

Regarding claims 2 and 3, Aggarwal teaches purchase history including frequency of purchases in a product or a number or purchases in a product category (see col. 11 line 1-15).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aggarwal et al. U.S. Patent No. 6,349,309, and further in view of Herz et al. (US 6571279).

Regarding claims 11-19, Aggarwal teaches information about a customer's purchase behavior including a list of items purchased, the price of the items, the frequency of purchase and other information relating to an item for sale (see col. 11 lines 7-15). Since Aggarwal stores transaction history of every item purchased, whether the promotion is for goods from the same or different promoter, whether the product is new to the store or customer would not make a patentable difference to Aggarwal's promotional list. Those limitations are non-functional descriptive material. However, Herz teaches recording information about product's size, shape, packaging and advertisement or anything that might impact its appeal to customers. Therefore, it would have been obvious to one ordinary skill in the art the time of the invention to include such information in order to provide shopper with coupons or promotions specifically tailored to their preference as taught by Herz (see col. 23 lines 1-67 and col. 24 lines 9-51).

(10) Response to Argument

Regarding the 35 U.S.C. 112, first paragraph rejection, Appellant states that specification page 16 lines 17-18 along with specification page 4 lines 25-26 discloses: "*only if said promotion*

qualification indicates that both said first product item and said second product item were received via said al least one input device at said POS during said purchase transaction, with said at least one processor, deducting from a charge for said purchase transaction a value of promotion associated with said second promotion and a value of promotion associated with said first promotion".

Appellant states that page 4 lines 25-26 discloses, ***to "pair" promotions*** refers to any association of two or more promotions including requiring exercise together".

Examiner would like to point out that the term "pair" is never used in the claim, and only where the term "pair" is used, the examiner is required to interpret that term in light of the specification as disclosed in page 4. Examiner also would like to point out even though according to the specification *pairing of promotions* is understood to mean *exercising together,* and also according to the specification that *electronic promotions can include*, for example *electronic codes automatically transmitted to the register of a vendor, electronic data describing* an advertisement to a consumer's personal computer or *deductions from a customer's account upon purchase or order of* ***a product***, however pairing of promotions and an electronic promotion including electronic data describing deduction from account upon purchase **of a product** does not equate to if *only if said* ***promotion qualification indicates that both said first product item and said second product item were received via said al least one input device at said POS during said purchase transaction,*** *with said at least one processor,* ***deducting*** *from a charge for said purchase transaction a value of promotion associated with said second promotion and a value of promotion associated with said first promotion*".

Regarding the limitation "only if said first consumer first product category purchase determination *indicates no prior purchase* by said first consumer of either *an item* of said first product or of *an item* in said first product category, *storing,* with said at least one processor, in a

database in a computer memory in association with said first consumer identification information, *said first promotion*", appellant states that page 18 lines 6-19 and page 16 lines 11-17 teaches the limitation. No where in the specification, including the cited section, discloses storing said first promotion if there is no indication of prior purchase of *an item* of **said** first product or *an item* of **said** first product category (per the preamble the said first promotion is a promotion for purchase of an item of a first product or purchase of an item of a first product category).

Regarding the rejection of 35 U.S.C. 112, second paragraph, the claim recites storing product purchase history wherein said product history information indicates *identification information for consumers associated* with purchase of items of products by said consumers such that each identification information for each consumer is associated with identification of previous purchase of item of products by that consumer. Examiner would like to point out that the claim was rejected as being indefinite or unclear. Appellant however attempted to provide support in the specification. The rejection is based on being unclear to the examiner what the product purchase history information indicates. Does the purchase history information **only** indicated the ***identification of the customer*** who previously purchased items of products or does it indicates the identification of the customer **and** the items of products previously purchased?

Regarding the term "item of a product" or "item of a product category" Appellant provides explanation that the word "item" has a well-known meaning in the English language: a unit or element of a set. Appellant also states that an *item* of a first product could include "Post Raisin Bran", "Kellogg's Raisin Bran", or "Total Raisin Bran"… similarly, an *item* of a first product category could include "breakfast cereal", "snack foods", or "diapers". For example if "Post Raisin Bran" is an item of a product, it is still unclear what is considered the unit or element of a set. If Raisin Bran is the product, is the brand "Post" an item? Again if the

"breakfast cereal" is an item of a product category what is the category and what is the item of the category?

Regarding the rejections of claims 1-3, 11-19, 23, 27, 36, 44, and 48 under 35 USC 102(b) as being anticipated by Deaton Appellant argues that *Deaton does not disclose* ***requiring both the first promotion for a product of a category for which the consumer has not previously purchased, and a second high relevance promotion for a product the consumer is likely to purchase, be exercised together*** in order to incent the customer to purchase the first product. Appellant asserts that the applicant notes that pending claims define *requiring both the first promotion (for a product of category for which the consumer has not previously purchased)*, the low relevance promotion/product, **and a second high relevance promotion for a product the consumer is likely to purchase, be exercised by the consumer together**, in order to incent the customer to purchase the first product. Appellant concludes that Deaton does not disclose or suggest that concept.

The claim recites determining *a first consumer first product category purchase determination* indicating whether said product purchase history information associated in a database with a first consumer identification information for said first consumer indicates *prior purchases* of either *an item of said first product* **or** an *item in said first product category;* ***only if the determination indicates no purchase of either items (item of said product or said product category) a fist promotion (promotion for an item of a first product or first product category) is stored.*** First of all examiner would like to point out that the first promotion has no relationship with the item that is not purchased. It is associated with the item that is indicated in the preamble as a promotion for an item of a first product or first product category which is different that an item of said product or product category with no purchase record. Second since the claim recites only if there is indication that there is no prior purchase of an item that the first promotion is

stored, that means if the there is an indication of prior purchase the first promotion is not stored. Therefore there is no first promotion to be stored and/or provided and/or received. The claim also recited only if the said promotion qualification indicates that both said first product item and said second product item were received during purchase transaction deducting from a charge for said purchase transaction a value of promotion associated with said first and second promotion. However if it is indicated that both first product item and second product item were not received during the transaction, and if it is determined that there is no first promotion therefore there is no first promotion value thus the step of *deducting* is not performed. Therefore the claim does not recite ***requiring*** *both the* ***first promotion for a product of a category for which the consumer has not previously purchased,*** *and a second high relevance promotion for a product the consumer is likely to purchase,* ***be exercised together.***

Referring to the rejections of claims 1-3, 23, 27, 36, 44, and 48 under 35 USC 102(e) as being anticipated by Aggarwal, Appellant argues that Aggarwal does not disclose (1) *determining* a product category (or product) for which *there is no data indicating the consumer has previously purchased*; and Aggarwal does not disclose (2) *setting a "low relevance" promotion for that consumer to that product category (or product), and then pairing that low relevance promotion with a promotion determined to be relevant to the consumer via either* (a) display of the two promotions together or (b) requirement that the two promotions be exercised together).

The claim recites ***storing product purchase history information*** that indicates identification information of consumers associated with purchase of items of products such that *the identification information for each consumer is associated with identification* ***of previous purchases of item of products; … determining*** whether ***said product purchase history information associated*** with a database with a first consumer identification information ***for said***

first consumer indicates prior purchase of either an item of said first product or of an item in said first product category and ***only if the determination indicates no prior purchase*** of an item of said first product that the first promotion is stored. However if in the database associated with the consumer is stored previous purchases of item of products, the determination would indicate that the database includes of prior purchases of the item of products, therefore the first promotion is not stored.

As indicated above there is no recitation in the claim, setting a "low relevance" promotion for the consumer to that product, and then pairing it with a promotion determined to be relevant to the consumer. The claim recites providing said first promotion (stored promotion when it is determined that there is no prior purchase of an item) with a second promotion which has a relatively high relevance for the consumer. But if it is determined that there is a prior purchase of an item of said product (which is already indicated in the claim that the database includes previous purchases of the items), the claim does not include any step to be performed.

Regarding the argument that Aggarwal does not disclose either (1) low relevance promotions or (2) promotions for products or product categories in which a consumer has never purchased, the claim however does not indicate if the first promotion is a “low relevant” nor does it indicate that the first promotion is for an item that is not purchased by the consumer.

Appellant states as follows:

> That passage provides the example that a low relevance promotion is one relatively unlikely to be exercised by the consumer because the promotion is for a product or in a class of products from which the consumer has not previously purchased. The specific example provided is that a product never purchased by a consumer has low relevance. At page 3 lines 21-23, with emphasis provided, the specification explains a goal of pairing:
>
> By pairing a "more relevant" promotion with a "low relevance" promotion, the consumer's attention can be captured and the likelihood that the "low relevance" promotion will be exercised increased.

However, Appellant's specification page 3&4 also disclosed as follows:

These and other objects of the invention are realized by providing a novel method, system, and computer-readable medium that use a historical record of consumer behavior and/or demographic information relating to a first product and/or product class to identify a "more relevant" promotion that is to be "paired" with a second "low relevance" product and/or product class. By pairing a "more relevant" promotion with a "low relevance" promotion, the consumer's attention can be captured and the likelihood that the "low relevance" promotion will be exercised increased. In one embodiment, the product and/or product class is in the packaged good industry. In another embodiment, the "paired" promotions are printed on a single piece of paper. In another embodiment, the "paired" promotions are mailed in a single circular. In another embodiment, the "more relevant" promotion and the "low relevance" promotion relate to products that are produced by a same promoter. In another embodiment, the "more relevant" promotion and the "low relevance" promotion relate to products that are produced by different promoters. In another embodiment, the "more relevant" promotion and the "low relevance" promotion relate to products that are produced by different promoters, and the promoter with the "low relevance" promotion compensates the promoter with the "'more relevant" promotion. In another embodiment, the relevancy of a promotion is determined based upon purchase history. In another embodiment, the relevancy of a promotion is determined based upon the number of times a product is purchased. In another embodiment, the relevancy of a promotion is determined based upon the number of times a product category is purchased. In another embodiment, the relevancy of a promotion is determined based upon the loyalty of a consumer to a brand (e.g., how often the consumer purchased a particular brand). In another embodiment, the relevancy of a promotion is determined based upon the volume of consumer purchases. In another embodiment, the relevancy of a promotion is determined based upon the frequency of consumer purchases. In another embodiment, the relevancy of a promotion is determined based upon the value (dollar or relative) of the promotion. In another embodiment, the relevancy of a promotion is determined based upon the location where the promotion can be exercised. In another embodiment, **the pairing is performed to promote a product to a consumer who has never or only rarely purchased the product**. In another embodiment, **the pairing is performed to promote a new product**. In another embodiment, the pairing is performed to **promote a product new to a location**. Other embodiments entail the combination of one or more of any of the embodiments described above. For example, the relevancy of a product may be determined based on loyalty and the frequency of purchase.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which appellant relies (i.e., low relevance promotion for products which the consumer has not previously purchased) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations

from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellant claiming in claim 17, that the first promotion is a product that said consumer has not previously purchased is a prima facie case that in claim 1 the promotion is not exclusively for products which have not been purchased or is a "low relevance" to the consumer.

Regarding the rejection of claims 11-19 under 35 USC 103(a) as being unpatentable over Aggarwal and further in view of Herz , Appellant argues that neither Aggarwal nor Herz discloses the limitation "said first promotion" as recited in claims 11-19 and the examiner has not presented a motivation to combine the Aggarwal and Herz. Appellant further argues that in response to examiner's assertion at office action page 8 lines 22-25 is not relevant since the pending claims specifically define *determining the low relevance promotion based upon the absence of purchase data from the customer's purchase history record*. Examiner again would like to point out that the claim recites **storing** said first promotion **only if** said first consumer first product category purchase determination indicates **no** prior purchase by said first consumer of either an item of said first product or of an item in said first product category, storing, with said at least one processor, in a database in a computer memory in association with said first consumer identification information. There is no claimed step of determining of a first promotion and according to the claim "said first promotion" refers to the promotion recited in the preamble.

Appellant also asserts that "(t)he examiner apparently does not understand claim 1's recitation "said first promotion", as evidenced by the examiner's statement: "Since Aggarwal stores transaction history of every item purchased, whether the promotion is for goods from the same or different promoter, whether the product is new to the store or customer would not make a patentable difference to Aggarwal's promotional list." Obviously, if the product is new to the customer, there would be no record of that product in that customer's transaction history".

Examiner agrees with Appellant that if the product is new to the customer that there would be no record of the product in the customer's transaction history, however there is relationship between a product with no record in customer's transaction and the promotion. Again the claim recites only if said first consumer first product category purchase determination *indicates no prior purchase* by said first consumer of either **an item** of said first product or of **an item** in said first product category, *storing,* with said at least one processor, in a database in a computer memory in association with said first consumer identification information, *said first promotion.* In short the claim does not explicitly indicate that the "first promotion" that is stored is for the product that is not in consumer's purchase history.

Regarding claim 11-19, Examiner indicated that whether the promotion is for discount on *purchase of products in a packaged goods industry*, whether is for *goods from a same promoter*, or *different promoters* etc., it does not change the step of storing, providing, receiving and/or determining. There is no additional step performed or recited because the promotion is for one type of goods or another and also if the promoter is the same or different. Therefore, the language indicating what the promotion is for or from is nonfunctional descriptive material. Thus, this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2D 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (fed. Cir. 1994).

Examiner also provided Herz for the teaching of providing promotions for different kind of products. Herz also teaches that in addition to storing information about the number and types of items purchased at different dates and times, the database notes the customer's price sensitivities and coupon usage. Herz also teaches that detailed information about the purchase item is also noted; information about a product's color, size, shape, packaging and adverting – anything that might impact its direct appeal to customers is recorded; history and relative effect

of the coupons that have already been generated for it is also stored and in time the vendors develops a highly detailed database that connect shoppers to purchase items, prices, and coupons (see col. 22 line . Herz also teaches that the shopper loyalty is used by retailer to extract and model patterns of customer behavior, allowing for the design of optimal sales promotions. Therefore, it would have been obvious to on ordinary skill in the art at the time of the invention for the Deaton coupon system to include promotions for different type of goods or from different promoters in order to promote any goods sold by the retail store as in Herz.

Regarding claim 27 which is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim, Appellant did not provide any argument therefore, the objection is maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Conferees:

Eric Stamber/E. W. S./
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